

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR-13-0566 EMC

Plaintiff,

v.

**ORDER GRANTING DEFENDANT
LEE'S MOTION TO SUPPRESS
STATEMENTS**

RYAN CARROLL, *et al.*,

(Docket No. 63)

Defendants.

I. BACKGROUND

Bright and early on October 18, 2011, Robert Lanham Lee awoke to the presence of police in the doorway of his motel room. The motel room was located in Vermont and was Lee's primary residence at the time. The police officers – Detective Wayne Hanson and Detective Cheryl Franco of the Humboldt County Police Department – were there to invite Lee to the Brattleboro Police Department to “chit-chat.” 3:45.

Lee asked the detectives if he was under arrest. Detective Hanson responded that Lee was “absolutely not” under arrest. 4:17. Rather, Hanson explained that they “need[ed] to talk to [Lee] about something” down at the station, and would give him a ride back “after we’re done chit-chatting.” *Id.* Hanson told Lee that he was not under arrest. Each time Hanson said this to Lee, he impressed upon Lee that the detectives “need[ed]” to talk to him down at the station. The detectives did not accede to Lee's request to take a shower and did not allow him to meet them at the station as he suggested. Instead, after a brief break in which Lee was allowed to put his shoes on, Lee was directed to the detectives' vehicle – which was flanked by a marked police car. Once outside,

1 Hanson searched Lee for weapons and put him in the car. In the car, Lee asked the officers if he
 2 needed a lawyer. Franco responded that she “do[esn’t] think so.” 10:20. In support of Franco’s
 3 assessment, Hanson explains that no lawyer is needed because “we’re detectives and after we’re
 4 done talking I’m going to give you a ride back so you won’t need a lawyer ‘cause we’re just gonna
 5 talk and when you get tired of talking I’ll give you a ride back.” 10:25.

6 After about a seven minute car ride, Lee and the detectives arrived at the station. Thanking
 7 Lee for coming down to the station, the officers reminded him that “[w]hen we’re done we’ll give
 8 you a ride home.” 19:00. The detectives situated Lee in the corner of a windowless interrogation
 9 room and began asking questions. The interrogation turned accusatory quickly; within ten minutes,
 10 the officers warned Lee that they have already interrogated others regarding his involvement in a
 11 crime. Throughout the interrogation the detectives presented evidence implicating Lee in the killing
 12 of Reetpaul Rana.

13 About eighty minutes into the interrogation Lee stated that he was scared of the detectives,
 14 and explained that generally “[he] do[esn’t] talk to police” and that “when [he] get[s] arrested [he]
 15 do[esn’t] even tell ‘em [his] name.” 1:20:00. At this point, Hanson reminded Lee “you’re not under
 16 arrest,” to which Lee responded “I know.” 1:20:20. Over the course of the interrogation, Lee twice
 17 indicated he might want a lawyer present. Those requests were not heeded. Indeed, in response to
 18 Lee’s second request, Detective Hanson said to Lee, “innocent people don’t want attorneys.”
 19 1:58:25. The “chit-chat” lasted a total of two hours, during which Lee made numerous incriminating
 20 statements.

21 Lee now moves to suppress those statements because (1) the officers failed to inform him of
 22 his Fifth Amendment rights prior to his custodial interrogation; and (2) the officers improperly
 23 continued their questioning of him after he invoked his right to counsel.

24 II. DISCUSSION

25 A. Miranda Violation

26 The Constitution requires that a person be advised of certain rights if they are “in custody”
 27 and “subjected to interrogation.” *Miranda v. Arizona*, 384 U.S. 436, 467-468. The government’s
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1 failure to provide such advisements renders statements made by a person during a custodial
2 interrogation inadmissible. *See id.*

3 Here, the parties do not dispute that the detectives (1) failed to provide Lee with the a
4 *Miranda* warning; and (2) subjected Lee to an interrogation within the meaning of *Miranda*. Thus,
5 the question of whether Lee's statements must be suppressed under *Miranda* turns on whether Lee
6 was in "custody" at the time he made them.

7 In determining whether an individual was in custody, a court must inquire as to whether "a
8 reasonable person would have felt that he or she was at liberty to terminate the interrogation and
9 leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). If, considering the totality of the
10 circumstances, a reasonable person would not feel free to leave the interrogation, then the
11 interrogation was custodial. *United States v. Kim*, 292 F.3d 969, 973 (9th Cir. 2002). Generally, a
12 reasonable person would not feel free to leave if "something [is] said or done by the authorities,
13 either in their manner of approach or in the tone or extent of their questioning, which indicates that
14 they would not have heeded a request to depart or to allow the suspect to do so." *United States v.*
15 *Hall*, 421 F.2d 540, 545 (2d Cir. 1969); *see also Dyer v. Hornbeck*, 706 F.3d 1134, 1143 (9th
16 Cir.2013) (M. Smith, J., concurring) (explaining that circumstances and authorities' psychological
17 pressure created custody, despite the fact that detainee was aware of her physical ability to leave
18 during an unescorted bathroom break or out of an unlocked door of the interrogation room).

19 The Ninth Circuit has set forth the following non-exhaustive list of factors that are
20 particularly relevant to the custody inquiry: "(1) the language used to summon the individual; (2) the
21 extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of
22 the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain
23 the individual." *Kim*, 292 F.3d at 973 (quoting *United States v. Hayden*, 260 F.3d 1062, 1066 (9th
24 Cir. 2001)) (internal quotations omitted). Other factors may also be "pertinent to, and even
25 dispositive of, the ultimate determination whether a reasonable person would have believed he could
26 freely walk away from the interrogators." *Id.* at 974.

27 Here, the first *Kim* factor – the language used to summon the defendant – weighs slightly in
28 favor of the government. It is undisputed that the detectives requested Lee accompany them to the

1 station, and that Lee accepted their invitation though his request to first shower and go on his own
2 was effectively refused. At the motel, the detectives told Lee he was not under arrest and that they
3 would take him home if he “g[ot] tired of talking.” 10:23. However, they also said he could go
4 home only “when *we’re* done talking,” (emphasis added) which implies a degree of control by the
5 detectives; also, the detectives told Lee they did not have time for him to shower, and that he should
6 just put on his shoes and get in the car. Further, the fact that the detectives insisted that they
7 “needed” to bring him down to the police station for questioning rather than interview him at his
8 motel or a public place nearby might suggest to a reasonable person that he was not free to leave or
9 disregard their request. While Lee’s initial submission to interrogation may have been voluntary, it
10 was barely so. *See United States v. IMM*, 747 F.3d 754, 766 (9th Cir. 2013) (recognizing that while
11 voluntary contact with law enforcement is significant it cannot be the end of the custody inquiry).

12 Once at the police station, the detectives made statements and that more clearly implied a
13 significant level of control over Lee’s ability to leave. Shortly after arriving at the station, Lee was
14 again told, “When *we’re* done, we’ll give you a ride home.” 19:05 (emphasis added). That
15 statement implies the detectives maintained control over the length of the interview. Later in the
16 interrogation, Hanson responds to Lee’s inquiry about getting a lawyer, “*Like I said*, we are going to
17 give you a ride home *when we are done* talking with *you*.” 1:26:12 (emphasis added).

18 To be sure, Lee was told at the outset he was not “under arrest.” At one point at the station,
19 Lee appears to acknowledge that he is not under arrest (1:20:00). However, a reasonable lay person
20 would not necessarily equate the absence of an arrest with complete freedom to leave an
21 interrogation. A lay person could well think that one could be detained without being formally
22 arrested; a lay person might well think that an arrest means being booked and jailed until released on
23 bail pending filing of criminal charges. In fact, Lee’s other statements indicate he believed that lack
24 of a formal arrest did not mean he thought he was free from constraints; in asserting that he wants to
25 know *what* he is “legally required to tell them,” (1:42:00) Lee revealed the belief that he *was* legally
26 required to tell them something, and is obligated to submit to questioning. And Lee did say late in
27 the interrogation that, “it feels like you guys want to arrest me.” 1:58:45. In short, these facts
28 indicate telling a subject of an interrogation that he is not under arrest does not clearly imply he is

1 free to leave.

2 Significantly, the detectives never told Lee during the interrogation that he was free to leave
3 at any time. The detectives' failure to inform Lee – even once – that he was free to leave contrasts
4 with *United States v. Crawford*, 372 F.3d 1048, 1051 (9th Cir. 2004). In *Crawford*, a suspect in an
5 FBI interrogation room was told expressly that he “could leave at any time.” *Id.* Shortly thereafter,
6 he was again told that “he was not under arrest and that he was free to leave.” *Id.* at 1052. The
7 Ninth Circuit found the *repeated* reminder that the suspect was *free to leave* was “[p]erhaps most
8 significant for” determining the interrogation was non-custodial. *Id.* at 1060. *Cf. United States v.*
9 *Bassignani*, 575 F.3d 879, 886 (9th Cir. 2009) (“We have consistently held that a defendant is not in
10 custody when officers tell him that he is not under arrest *and is free to leave at any time.*”) (emphasis
11 added); *United States v. Norris*, 428 F.3d 907, 912 (9th Cir. 2005) (interrogation was non-custodial
12 in part because suspect was “told that his cooperation was voluntary and that he was free to
13 *terminate the interview at any time*”) (emphasis added). While Lee is informed he was not under
14 arrest at the outset and later into the interrogation, he was also told he would be taken home “when
15 we’re done,” not “whenever you’d like to leave.” Moreover, unlike the one hour interview in
16 *Crawford*, Lee’s interrogation lasted nearly two hours: he was accusatorily interrogated for an hour
17 between the times he was told he was not under arrest. It is only at 1:58:47 that Lee asks, “Well, can
18 we do that?” in response to Detective Franco’s statement, “I didn’t say I was going to arrest you. At
19 all. [. . .] I’m taking you home” at which point the detectives acceded to Lee’s desire to end the
20 interrogation.

21 Accordingly, while the first *Kim* factor weighs slightly in favor of the government, it does so
22 only as to the initial submission to the interview; once the interrogation commenced at the police
23 station, his ability to leave was not so apparent.

24 The second factor – the extent to which the defendant is confronted with evidence of guilt –
25 weighs strongly in favor of Lee. Ten minutes into the interrogation, Franco aggressively confronted
26 Lee with the detectives’ have previous interrogation evidence, stating: “[l]ike Mike, Cody, Ryan.
27 Don’t think we haven’t already talked to those guys.” 26:20. In addition, the detectives repeatedly
28 presented Lee with evidence that implicated his involvement in the killing of Rana. *See* 26:20;

1 1:18:00; 1:44:00; 1:51:00. The detectives told Lee that others had fingered him as “maybe being
 2 responsible” for the killing. 1:18:00. Further, the detectives presented Lee with his cell phone call
 3 history – pointing out that it indicated that (1) Lee had lied multiple times during the interrogation;
 4 and (2) Lee had received suspicious phone calls potentially linking him to Rana’s killing. 1:44:00.
 5 The detectives pointed to the inconsistencies in Lee’s story and presented or alluded to evidence that
 6 implicated his guilt. *Id.* Such repeated suggestions of involvement in a serious crime weighs in
 7 favor of finding custody. *See United States v. Toliver*, 480 F. Supp. 2d 1216, 1219 (D. Nev. 2007)
 8 (finding that an officer’s use of witness statements to contradict a defendant indicated custody); *see*
 9 *also Bassignani*, 575 F.3d at 884 (“We have found a defendant in custody when the interrogator
 10 adopts an aggressive, coercive, or deceptive tone.”).

11 The third factor – the physical surroundings of the interrogation – likewise weighs toward a
 12 finding of custody. Lee was interrogated in a small room at a police station located about a ten-
 13 minute-drive from his motel, and was reliant upon the officers for his transport home. *See*
 14 *Crawford*, 372 F.3d at 1059 (recognizing that interrogations in a police station generally weighs
 15 toward custody); *see also Toliver*, 480 F. Supp. 2d at 1219 (defendant’s reliance on the police for
 16 transportation indicated custody). The police directed Lee to sit in the corner of a windowless room,
 17 and placed themselves and a table between Lee and the only door. *See Exhibit B; see also Kim*, 292
 18 F.3d at 972 (finding that small windowless rooms that isolate or restrict a defendant can create a
 19 “police dominated” environment and indicate custody). Also, he had no obvious way of getting
 20 home. *United States v. Wauneka*, 770 F.2d 1434, 1438 (9th Cir. 1985) (a suspect’s dependence on
 21 the authorities for transportation weighs toward custody).

22 The fourth factor – duration of interrogation – also weighs in favor of a finding of custody.
 23 Lee was interrogated for nearly two hours. Courts have found that this duration generally weighs
 24 toward a finding of custody. *See United States v. Barnes*, 713 F.3d 1200, 1204 (9th Cir. 2013)
 25 (finding that an interrogation lasting roughly two hours is indicative of custody); *see also*
 26 *Bassignani*, 575 F.3d at 887 (noting that an interview lasting slightly more than two hours was
 27 “lengthy” and weighed toward custody). Nothing in the record or the government’s arguments
 28 indicates this case is an exception. Thus, this factor also tilts in favor of Lee.

1 The final factor – the degree of pressure applied to detain the defendant – weighs in favor of
2 Lee. The detectives pressured Lee to cooperate by repeatedly implying that if he did not cooperate
3 they would treat him as a suspect going forward. 1:33:00 (urging Lee to cooperate, Hanson states
4 **right now** we’re treating you as a witness. . .”). The accusatory nature of the interrogation added
5 pressure, and his two requests for counsel were ignored or rejected. Although the detectives did not
6 physically restrain Lee or threaten him explicitly, *see Hayes*, 2014 WL 5408425 at *2) (the fact that
7 the defendant was handcuffed during the interrogation tilts the fifth *Kim* factor in favor of custody),
8 this factor is hardly dispositive. *Barnes*, 713 F.3d 1200, 1203 (9th Cir. 2013) (finding custody
9 where suspect was not physically restrained, but was psychologically restrained); *Dyer*, 706 F.3d at
10 1143-44 (M.Smith, J., concurring) (a custody does not hinge on a suspect’s physical capacity to
11 leave an interrogation).

12 Taken as a whole, the *Kim* factors favor a determination that a reasonable person in Lee’s
13 circumstances would not have felt free to leave the interrogation, and thus Lee was in custody within
14 the meaning of *Miranda*. The government’s argument to the contrary is unpersuasive. The
15 government’s argument relies almost entirely on the fact that (1) Lee was told he was not under
16 arrest and accompanied the detectives voluntarily; and (2) the detectives did not handcuff Lee to the
17 table or brandish their weapons during the interrogation. The voluntary nature of Lee’s initial
18 accompaniment is questionable as noted above. In any event, the first factor is not dispositive.
19 *IMM*, 747 F.3d at 766.

20 The government’s second point – that Lee was not physically restrained or threatened with
21 weapons – makes little difference. While an individual who is physically restrained or threatened
22 during an interview will almost certainly recognize he is not free to leave, it does not follow that the
23 absence of such physical threats or restraints proves that an interview was non-custodial. *See*
24 *Barnes*, 713 F.3d at 1203; *see also United States v. Beraun-Panez*, 812 F.2d 578 (9th Cir. 1987)
25 (finding custody despite absence of physical restraints or threats). Moreover, the government does
26 not adequately account for the other *Kim* factors. The Court concludes once at the station, a
27 reasonable person under the circumstances of Lee’s interrogation would not have felt free to leave.

28 Accordingly, the Court **GRANTS** Lee’s motion to suppress the statements he made to the

1 government during his October 18, 2011 interrogation because Detectives Hanson and Franco
2 should have but failed to provide Lee with a *Miranda* warning before subjecting him to a custodial
3 interrogation.

4 B. Right to Counsel

5 Lee argues additionally that his statements should be suppressed because the detectives
6 violated his Fifth Amendment rights by continuing to question him despite his multiple requests for
7 counsel. Specifically, Lee points to two of his interview statements:

- 8 (1) “If I’m pointing somebody out at a lineup, I would like to have
9 a lawyer here.” 41:33.
- 10 (2) “If you guys are asking about a homicide, I’d like to have a
11 lawyer with me that way I don’t incriminate anybody or
12 myself.” 1:42:00.

13 The government responds that the first statement does not invoke his right to counsel because
14 it is a conditional statement. As to the second statement, the government concedes that it is a “close
15 call,” but seems to argue that the point is moot because it does not intend on introducing any
16 statements made thereafter.

17 Under *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981) all questioning of a suspect must
18 cease upon the suspect’s request for counsel. *See also Smith v. Illinois*, 469 U.S. 91, 95 (1984). If a
19 suspect invokes his right to counsel, courts may admit his responses to questions thereafter “only on
20 a finding that [the suspect] (a) initiated further discussions with the police, and (b) knowingly and
21 intelligently waived the right he had invoked.” *Id.* To trigger the protections of *Edwards*, a suspect
22 must unambiguously and unequivocally request counsel. *Davis v. United States*, 512 U.S. 452, 459
23 (1994). This standard does not require that the suspect “speak with the discrimination of an Oxford
24 don,” rather it requires that a suspect “must articulate his desire to have counsel present sufficiently
25 clearly that a reasonable police officer in the circumstances would understand the statement to be a
26 request for an attorney.” *Id.*

27 In *Smith v. Endell*, 860 F.2d 1528 (9th Cir. 1988) the Ninth Circuit addressed whether a
28 defendant’s conditional statement constituted an invocation of his Fifth Amendment right to counsel.
There, during interrogation, the defendant directed a statement to the authorities as follows:

1 At this point, I think maybe you're looking at me as a suspect, and I
2 should talk to a lawyer. Are you looking at me as a suspect?

3 *Id.* at 1529. The Ninth Circuit explained that this conditional statement was an invocation of the
4 defendant's right to counsel, *if* the officers he made it to *did* consider him a suspect. *Id.* at 1531.
5 The court concluded that "[s]ince they knew him to be a suspect, questioning should have stopped
6 until an attorney was present." *Id.* at 1532.

7 Here, both of Lee's statements invoking his right to counsel were conditional. The first
8 statement came when the officers are asking him to pick someone out of a photo line up. In
9 response, Lee indicates that if the officers are going to insist upon his "pointing somebody out at a
10 lineup, [he] would like to have a lawyer [present]." 41:33. In response, the officers put the pictures
11 away, and the interview moves on. Therefore, applying the reasoning set forth in *Endell*, since the
12 officers *did not* insist upon Lee picking someone out of a line up, Lee did not invoke his right to
13 counsel. 860 F.2d at 1532.

14 Lee's second statement conditions his invocation upon whether the officers are asking about
15 a homicide. It is evident that the officers *were* asking about a homicide. Therefore, applying *Endell*,
16 Lee's second invocation was operative and "questioning should have stopped until an attorney was
17 present." *Id.* at 1532. The government does not take issue with this as it does not seek to introduce
18 any statements Lee made after this point. The tactics of Detectives Hanson ("innocent people don't
19 want attorneys") and Franco are classic examples of what police should *NOT* do when the subject of
20 an interrogation asks for counsel.

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1 Accordingly, for this additional reason, the Court **GRANTS** the motion to suppress
2 statements made after Lee's second request for counsel.

3 This order disposes of Docket No. 63.
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5 IT IS SO ORDERED.
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7 Dated: April 28, 2015

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9 EDWARD M. CHEN
10 United States District Judge
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